

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF WEST VIRGINIA
CLARKSBURG DIVISION

ELECTRONICALLY
FILED
Mar 23 2018
U.S. DISTRICT COURT
Northern District of WV

DEAN E. BOWER and)	CASE NO.	1:18-CV-63 (Keeley)
GINGER S. BOWER,)		
)		
Plaintiffs,)		
)		
v.)		
)		
SCHINDLER ELEVATOR)		
CORPORATION,)		
)		
Defendant.)		

NOTICE OF REMOVAL

Defendant Schindler Elevator Corporation (“Schindler”), by counsel, removes the above-captioned matter to this Court pursuant to 28 U.S.C. §§1332, 1441 and 1446, and in support, states as follows:

1. On or about February 26, 2018, Plaintiffs Dean E. Bower and Ginger S. Bower filed the following lawsuit in the Monongalia County Circuit Court: *Dean E. Bower and Ginger E. Bower v. Schindler Elevator Corporation*, Cause No. 18-C-79 (“State Court Action”).

2. Defendant Schindler was served with a Summons and Complaint for the State Court Action on March 1, 2018 via certified mail. Schindler has attached within Exhibit A to this Notice of Removal a true and correct copy the Summons and Complaint and copies of all pleadings that have been filed in connection with this suit. Schindler has not served an answer in the State Court Action.

3. This Notice of Removal is filed within 30 days of receipt of the initial pleading by Schindler, and within one year of the commencement of this action, as mandated by 28 U.S.C. § 1446(b). *See Murphy Brothers, Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344 (1999). Accordingly, removal of this action is timely.

4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332, in that there is complete diversity of citizenship and the damages sought exceed the sum of \$75,000 as demonstrated by the following:

a. Plaintiffs Dean E. Bower and Ginger S. Bower were, at the time of the incident giving rise to this litigation and are now, domiciled in Marion County, West Virginia. (Exhibit A, Plaintiffs' Complaint, p. 1).

b. Defendant Schindler was, at the time of the commencement of this action and is at the present time, a corporation organized and duly incorporated under the laws of the State of Delaware with its principal place of business located in the State of New Jersey, and by virtue of being incorporated in and having its principal place of business located in said states, Schindler was, at the time of the commencement of this action and is now, domiciled in the States of Delaware and New Jersey, and was not then and is not now domiciled in West Virginia.

c. Although Plaintiffs did not demand a specific amount of damages in their Complaint, Plaintiffs contend that an elevator went into an uncontrolled descent and came to an abrupt and unexpected stop causing Dean E. Bower to sustain serious bodily injuries. Plaintiffs seek damages for past and future medical expenses, pain and suffering, permanent injuries, loss of enjoyment of life, and loss of consortium. Through medical records provided by Plaintiffs' counsel, Schindler has learned that Plaintiff Dean E. Bower underwent a L5-S1 spinal fusion surgery that he relates to the subject incident. Plaintiffs' counsel also indicated that Plaintiff Dean E. Bower is making a lost wage claim. He was employed as a registered nurse at the time of the incident and claims that he has been unable to work following the incident due to his alleged injuries. He is

currently claiming lost wages for approximately 21 months and his lost wage claim is expected to continue into the future. Plaintiffs' claimed damages exceed \$75,000.

5. This lawsuit is, therefore, a civil action over which this Court has original jurisdiction under 28 U.S.C. §1332 and is one which may be removed to this Court under 28 U.S.C. §§ 1441 and 1446. Further, removal to this judicial district and division is proper under 28 U.S.C. § 1441(a), as this district and division embrace Monongalia County, West Virginia where this lawsuit is pending.

6. This Notice is accompanied by copies of all process, pleadings, and orders served upon or by Schindler in this lawsuit. (See Exhibit A hereto.)

7. Promptly after it is filed with this Court, Schindler will serve this Notice on Plaintiff and file a copy of this Notice with the Clerk of the Monongalia County Circuit Court.

WHEREFORE, this action is properly removed from the Monongalia County Circuit Court, West Virginia to this Court for all further proceedings.

Respectfully submitted,

FROST BROWN TODD LLC

By: /s/ Elise N. McQuain

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CERTIFICATE OF SERVICE

Service of the foregoing was made by placing a copy of the same into the United States

Mail, first class postage prepaid, this 23rd day of March, 2018, addressed to:

Kelly R. Reed
Tamara B. Williamson
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Morgantown, WV 26508

/s/ Elise N. McQuain

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